SINGAPORE REPORTS

WONG YIP PUI v. HOUSING & DEVELOPMENT BOARD

[O.C.J. (Chua J.) November 27, 1984]
[Singapore – Suit No. 3886 of 1980]

Housing & Development Board – Lease of premises subject to terms and conditions – Plaintiff's son bought a house – Acquisition and revesting of premises by defendant – Whether plaintiff's son an "authorized occupier" – Housing & Development Act (Cap. 271), s. 48A.

By an agreement in writing dated April 14, 1970, the defendants leased the premises known as No. 133-D, Jalan Batu, to the plaintiff for a term of 99 years commencing January 1, 1969 subject to certain terms and conditions. After one of the plaintiff's sons bought a house in September 1976, the defendants acquired and revested the premises to themselves under s. 48A of the Housing & Development Act. The plaintiff sought revesting of the premises to himself. The question for decision was whether the plaintiff's son was an authorized occupier as defined by the Act.

Held: (1) the plaintiff's son is not an "authorized occupier" as defined in the Act, there being no person named in the application made to the Board and no authorization in writing by the Board;

(2) judgment would be for the plaintiff and the counterclaim dismissed with costs.

CIVIL SUIT.

L.A.J. Smith (G. Murugaiyan with him) for the plaintiff.

Wong Meng Meng for the defendants.

Cur. Adv. Vult.

Chua J.: By an agreement in writing dated April 14, 1970, (the said Agreement) the defendants, the Housing and Development Board, leased the premises known as No. 133-D, Jalan Batu (the said premises) to the plaintiff for a term of 99 years commencing on January 1, 1969, at the price of $6,200.00. On November 13, 1980, the defendants acquired and revested the said premises to themselves.

In this action the plaintiff claims, *inter alia,* the following:–

(a) An order that the acts of the Defendants in acquiring and revesting the said premises to themselves be declared illegal and null and void and be expunged from the record.

(b) Revesting of the said premises to the plaintiff.

(c) An injunction be granted restraining the defendants from doing the following acts or any of them that is to say entering, taking possession, selling, agreeing to sell, disposing of, leasing or dealing with the said property otherwise than by duly and effectually vesting the same in the plaintiff until further order of this Court.

The defendants counterclaim for:–

1. A declaration that the defendants have validly acquired the said premises.

2. Possession of the said premises.

3. Mesne profits until possession is delivered up.

These facts are not disputed. In 1970 the plaintiff was a tenant of the said premises. He was approached by the defendants, who were interested in selling this and other flats, to ascertain if he was interested in buying the said premises. The plaintiff indicated that he was interested in buying the said premises and he was told what the price was. He received a Lease dated April 14, 1970. The Lease set out the terms and conditions on which the Lease is held. By Clause 1(j) of the Special Covenants and Conditions of the Lease the Lessee covenants with the Board "to comply with and be subject to the restrictions, special provisions and conditions contained in sections 40, 41, 43, 44, 45, 46, 47 and 48 of the Housing and Development Ordinance, 1959." The original occupiers of the said premises were the plaintiff, his wife and their three minor children. When one of the plaintiff's sons, Wong Kum Yuen, came of age he received a legacy from his grandmother and went and bought a house in September 1976. When the defendants came to know of this, they proceeded to acquire the said premises. They claimed they lawfully exercised their powers under section 48A of the Housing & Development Act (Cap. 271) (the Act).

The following events took place when the defendants came to know that the plaintiff's son, Wong Kum Yuen, had bought a house.

On December 27, 1976, the defendants were informed that the plaintiff's son, Wong Kum Yuen, was the owner of a house at No. 29 Bedok Lane, Singapore 16, a semi-detached bungalow (AB 8). The plaintiff was sent for in January 1977 by the defendants (AB 9). The plaintiff's son called to see the defendants and this was followed by a letter from Wong Kum Yuen's solicitors to the defendants stating that Wong Kum Yuen was the owner of No. 29 Bedok Lane (AB 10).

On March 8, 1977, the defendants wrote to the plaintiff a letter headed "Without Prejudice" seeking information as to the type of property at No.

29, Bedok Lane and the occupiers of the property to enable the defendants "to look further into your case in the light of Housing & Development (Amendment) Act" (AB 12).

The plaintiff replied giving the defendants the information sought that No. 29, Bedok Lane house was a semi-detached bungalow and that Wong Kum Yuen and his family were the occupiers (AB 13).

On March 29, 1977, the defendants wrote to the plaintiff asking the plaintiff to forward the marriage certificate of Wong Kum Yuen (AB 14). The plaintiff replied that Wong Kum Yuen had not decided on the marriage date and that he hoped that it would be soon (AB 15).

On April 28, 1977, the defendants wrote to the plaintiff headed "Without Prejudice" (AB 16). This letter stated that the plaintiff "did not declare your son's interest in the above private property (No. 29 Bedok Lane) which was purchased on September 7, 1976, that is within the grace period for lessees to declare their interests in private properties." The letter continued: "As your son is a permitted occupier of the above flat, you are affected by the Housing & Development (Amendment) Act under which you are required to resell the flat at 133-D Jalan Batu to a buyer recommended by the Board at original price plus any cost of improvements. Compulsory acquisition of your above flat may have to be recommended if this is not complied with. Kindly let us have your consent for resale as soon as possible."

The plaintiff replied on May 5, 1977, (AB 17), saying that Wong Kum Yuen was over 21 years old and of independent means and would be staying in his own house he acquired and asking the defendants to delete Wong Kum Yuen's name from the list of permitted occupiers. The plaintiff further said that he had no intention of vacating or reselling the said premises and he and the remainder of his family were still in occupation.

The Board then decided to compulsorily acquire the plaintiff's flat.

A Notice dated August 13, 1980, (AB 21) was then served on the plaintiff. The Notice stated that pursuant to section 48A of the Housing and Development Act (Cap. 271, 1970 Edn.) the Board intend to compulsorily acquire the premises on the grounds:–

"(a) that you and your family have ceased to occupy the above premises;

(b) that your son, Mr. Wong Kum Yuen, an authorised occupier is the owner of a private property known as No. 29, Bedok Lane, Singapore."

From the correspondence between the defendants and the plaintiff it was never the defendants' case that the plaintiff and his family had ceased to occupy the said premises.

What is pleaded by the plaintiff is that there are no reasons for the defendants to acquire the flat and that the defendants have wrongfully acquired the flat. The Defence is that the plaintiff comes within section 48A as the plaintiff's son is an "authorised occupier" as defined by the Act and he has acquired a house. Hence the whole case as pleaded is, was the purchase of the house by the plaintiff's son an act which enabled the defendants to invoke section 48A?

In 1975 the Housing and Development (Amendment) Act, 1975, was passed and the principal Act, The Housing and Development Act (Cap. 271), was amended by inserting immediately after section 48 a new section 48A.

The relevant provisions of section 48A read:

"48A.–(1) The Board may compulsorily acquire any flat, house or other living accommodation sold subject to the provisions of this Part, whether before or after the commencement of the Housing and Development (Amendment) Act, 1975 –

(a) if the owner thereof and his spouse, if any, has, in the opinion of the Board, ceased to occupy the same;

(b) if the owner thereof, his spouse or any authorised occupier has at any time, whether before or after the commencement of the Housing and Development (Amendment) Act, 1975, acquired whether by operation of law or otherwise any title to or an estate or interest in any other flat, house or building or land;
....."

The phrase "authorised occupier" is specifically defined in section 2(1) of the Act as follows:–

" "authorised occupier" means a person who is named in an application made to the Board as the person who intends to reside in the flat, house or other living accommodation sold or to be sold by the Board under Part IV or any person who is authorised in writing by the Board to reside therein;"

This definition was added to the Act in 1975 by the Housing and Development (Amendment) Act, 1975.

The parties agreed that they would not call wit-

nesses; they said it was not necessary as there was no issue of fact.

As I have said the whole case as pleaded is, was the purchase of the house by the plaintiff's son an act which enabled the defendants to invoke section 48A?

The question for decision is, is the plaintiff's son an authorised occupier as defined by the Act.

An authorised occupier means a person who is named in an application made to the Board as the person who intends to reside in the flat or a person who is authorised in writing by the Board to reside therein. In this case there is no application for the flat at all. There cannot possibly be a person who is named in the application.

However, there is a Memorandum prepared by the defendants with a "List of Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" and the plaintiff's son, Wong Kum Yuen, is in the list (AB 7).

This Memorandum was dated March 23, 1974, and stated that "We have received an application to purchase Board's flat under the "Home Ownership" scheme from Mr. Wong Yip Pui and a family of four members". It was made by E.O. (Sales) and addressed to E.O. (K) with a request to investigate and submit a report on the tenancy of the said premises as detailed in the form. E.O. (K) reported under "List of Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" the names of the plaintiff, his wife and three children, one of them being Wong Kum Yuen. At the bottom of the form there is a remark that the applicant is the lessee of the said premises.

This Memorandum was made four years after the completion of the sale of the said premises and the tenancy agreement to which there was a Schedule "A" had terminated 4 years previously. The remark that the plaintiff is the lessee of the said premises obviously refers to the Lease of April 14, 1970. It is impossible that the Board could have received an application to purchase Board's flat under the "Home Ownership" Scheme from the plaintiff. The list of "Permitted Occupiers as per Schedule "A" of the Tenancy Agreement" has nothing to do with "authorised occupier" defined in the Amendment Act. The type of accommodation described in the Memorandum was "three room flat sold property".

The Housing and Development (Amendment) Act was passed in 1975. It is clear from the terms of the Memorandum that no part of the document could possibly be referring to the 1975 Amendment.

It is not in dispute that in 1970 the plaintiff did not apply to buy the said premises. It was the Board which approached him to buy it. It is obvious that the Memorandum AB 7 is appropriate where a tenant applies to the Board to buy a flat and investigation would be necessary for the Board to decide whether to sell the flat or not. In the present case it was not stated whether the plaintiff's application was recommended or not recommended for purchase of Board's flat but there was a remark that "Applicant is the lessee of the above flat, please". It cannot be suggested that AB 7 was in reality an application for a flat which had already been sold.

It is clear that the plaintiff's son is not an "authorised occupier" as defined in the Act, there being no person named in the application made to the Board and no authorisation in writing by the Board.

There will be judgment for the plaintiff and costs. There will be an order in terms of prayers (a), (b) and (c) claimed in paragraph 16 of the Statement of Claim. The counterclaim is dismissed with costs.

Claim allowed;
Counterclaim dismissed.

Solicitors: *G. Murugaiyan; Shook Lin & Bok*

P.N. ELECTRONIC PTE. LTD. v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) December 14, 1984]
[Singapore – Magistrate's Appeal No. 97 of 1983]

Provident Fund – Central Provident Fund contributions by employer – Transportation allowances paid to employees – Whether wages – Reimbursement of transport expenses – Whether salary – Central Provident Fund Act (Cap. 121), ss.2, 7 & 29(1).

Provident Fund – "Remuneration" – Meaning of.

The appellant company was charged, convicted and fined by a Magistrate's Court on six charges under section 29 (1) of the Central Provident Fund Act ("the Act") in that